

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2010-007912-004 DT

05/15/2015

HONORABLE MARGARET R. MAHONEY

CLERK OF THE COURT
A. Gonzalez
Deputy

STATE OF ARIZONA

KIRSTEN VALENZUELA

v.

THANDIKA TAWEH SINGLETON (004)

KENNETH S COUNTRYMAN

JUDGE WELTY

COMPLEX CASE / TRIAL DATE RESET

COURTROOM – SCT 8A

1:21 p.m. This is the time set for Capital Case Management Conference.

State's Attorney:	Kirsten Valenzuela
Defendant's Attorney:	Maxi Marshall for Kenneth S. Countryman
Defendant:	Present
Court Reporter:	Karen Bolton

Proceedings are also electronically recorded.

Proceedings are held concurrently in the following Codefendants' cases: State v. Darnell Jackson (001), Jerry Cockhearn, Jr. (003), Thandika Singleton (004), John Webber, III (005), Corey Royalty (007) and Anthony Wright (008). Codefendants are present and represented by counsel, or appearing *pro se* with Advisory Counsel.

1:36 p.m. Victim's Next of Kin, Trina Ledesma-Leung is present telephonically.

The Court has received and reviewed Defendant Singleton's Case Status Report.

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ISSUES NOW RESOLVED IMPACTING SETTING A VIABLE TRIAL DATE:

1. *State v. Edwards*, a Capital case which the Presiding Criminal Judge has determined *will* proceed *before* a Trial in these matters (common Prosecutor/common Defense attorney: Daniel Raynak – *Knapp* counsel for Defendant Wright (008)).

2. Defendants Cockhearn, Singleton, Webber, Royalty and Wright have received their Ruling from the HON. JOSEPH KREAMER *denying* **Reconsideration Re: Motion to Dismiss, Alternatively to Preclude Co-Defendant Gittens From Testifying.**¹

3. Defendant Jackson's/omnibus **Motion to Strike Notice of Intent to Seek Death Penalty** was Ruled upon and **DENIED**, by the HON. JOSEPH KREAMER on May 8, 2015, with a formal Opinion to follow.

ISSUES REMAINING. DEFENDANT JACKSON'S Request for Stay.

Defendant Jackson (001) has filed a Motion For Stay² arguing that this Court has not timely heard or ruled on his Motion to Preclude Gittens/Motion to Dismiss³. The Court notes for the record that Jackson has never communicated to this Division before now an urgency in getting that particular motion heard. This Court has scheduled and heard other motions for Jackson as recently as May 1. While all the other Codefendants had a Motion to Reconsider pending before Judge Kreamer related to the same issue of precluding Gittens, this Court understood that if Judge Kreamer ruled in favor of the Defense on that Motion, such a ruling would likely inure to the benefit of Jackson even though he had not joined in that specific motion but because of his similar motion pending before this Division. Judge Kreamer's minute entry Ruling denying the reconsideration of Gittens' preclusion was filed on April 6, 2015 and Jackson sought clarification of that Ruling from Judge Kreamer immediately thereafter.

As the record in this case establishes, with this many defendants in a combined capital and complex case, which includes a *pro se* defendant who actively files many motions, there has been a very large volume of motions to brief, schedule for hearings and resolve. When this Court's staff offered a hearing date of June 26, 2015 for Jackson's Motion to Preclude Gittens,

¹ LET THE RECORD REFLECT Ms. Gray, on behalf of Defendant Cockhearn, and Mr. Kephart on behalf of Defendant Royalty, anticipate filing a Petition for Special Action seeking appeal of the Ruling allowing Gittens to testify/denial of Motion to Reconsider; Ms. Gray notes that the Petition is nearly 100% drafted.

² Jackson's **Request for Stay of Proceedings**, filed May 14, 2015.

³ Jackson's **Motion to Preclude Co-Defendant Gittens from Testifying and/or to Dismiss Sate's Notice of Intent to Seek the Death Penalty**, filed July 25, 2014.

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the Court had never been advised previously by Jackson that he desired to have his trial before the last day of June 3, 2015 or that he desired to have this Motion to Preclude Gittens heard before that last day. Having read Jackson's Motion for Stay, in which Jackson for the first time advises this Division expressly that he feels an urgency to getting the Motion to Preclude Gittens resolved, the Court offers Jackson June 1, 2015 for that hearing. Jackson indicates he needs only an hour of oral argument on the Motion and the Court will schedule it on June 1, 2015, before the current Last Day of June 3, 2015. Jackson's Counsel however indicates that he will not be working on June 1 and he further advises that he does not need to have the Motion heard before June 3. Jackson's Counsel acknowledges that Jackson cannot be ready to go to trial before June 3 and that he needs to complete interviews, conduct additional discovery including expert work, mitigation development and production, and possible further motion practice before he will be ready for trial. Jackson presents a written Motion to Continue Trial to the Court today.

Accordingly, for the reasons discussed on the record and above,

IT IS ORDERED denying Jackson's motion for stay.

The Court inquires if any party objects to the three trials grouping which was established before this Division became the Case Management Judge. All parties agree with the three trial groupings.

TRIAL CONFLICTS/SCHEDULING CONFLICTS.

1. The State's *Case Agents*, Detective Karl Martin and Detective Jan Butcher are currently in a capital Trial, *State v. Martinez*, expected to continue until the end of July 2015. Thereafter, Det. Martin will also serve as State's Case Agent in *State v. Edwards* for which potential jurors are being screened through the second week of December 2015. Based on this Trial conflict, Ms. Valenzuela requests that the first of the three Trial groupings⁴ in these matters be set *after* the first week in December 2015.

2. Defendant ROYALTY's attorney, Mr. Kephart, is currently defending Mr. Martinez in the ongoing capital case *State v. Martinez* until July; thereafter Mr. Kephart has additional trial conflicts and requests two months to prepare for this case during which he would not be in trial.

⁴ FIRST: Mr. Wright (008), Mr. Royalty (007) and Mr. Cockhearn (003)
SECOND: Mr. Webber (005) and Mr. Singleton (004)
THIRD: Mr. Jackson (001) *Capital Case*

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3. Defendant JACKSON's attorneys, Mr. Tavassoli and Mr. Parker have a trial conflict between August and December 2015. The Court receives and files Mr. Jackson's formal Motion to Continue Trial.

4. Defendant COCKHEARN's attorney, Ms. Gray, anticipates a Trial conflict with a 3 month trial expected to begin July 13, 2015; thereafter as Ms. Valenzuela will be in the *Edwards* Trial, Ms. Gray requests a January 2016 Trial date.

5. Defendant SINGLETON's attorney, Mr. Countryman, is currently in a 4-month trial expected to last until the end of September 2015.

6. Defendant WEBBER seeks, on his own behalf, a *one year* Trial continuance. The Court receives and files Mr. Webber's formal written *pro se* Motion to Continue Trial.

7. None of the parties have participated in any form of Resolution Management Conference. Interviews must be conducted, which the parties advise they are ready to set now that there have been rulings from Judge Kreamer on whether Codefendant Gittens would be testifying and the Motions to Dismiss, including the omnibus Motion to Dismiss Death Penalty Allegation.⁵

LET THE RECORD REFLECT Defendants **Cockhearn** (003), **Wright** (008) and **Royalty** (007) (individually, not through counsel) object to the amount of time it is taking to bring their cases to Trial. Defendant Royalty specifically objects to *any further trial continuances* beyond December 2015.

LET THE RECORD REFLECT that the Victim's next of Kin, Mother and Daughter, want the cases to proceed to Trial as swiftly as possible.

THE COURT FINDS extraordinary circumstances exist and delay is indispensable to the interest of justice, based on (a) all of the scheduling conflicts, (b) the need to prepare the cases for Trial and (c) the potential settlement negotiations that may take place. The Court finds that a Trial date in January 2016 is the soonest available and most viable Trial date considering all the issues and schedule conflicts. Accordingly,

⁵ LET THE RECORD REFLECT the parties are in agreement that interviews may proceed notwithstanding the possibility that Gittens' testimony may ultimately be precluded should Defendants prevail on an anticipated Appeal of Judge Kreamer's original Ruling re: Preclude Gittens, and the more recent denial of Defendants' Motion to Reconsider that Ruling. The parties agree to proceed with trial preparation as if Gittens were not precluded.

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IT IS ORDERED vacating the Trial date of June 2, 2015, and resetting this matter for **TRIAL** on **JANUARY 12, 2016 at 10:30 a.m.** before the HON. MARGARET R. MAHONEY. (See Trial Groupings; not all defendants will begin trial on January 12, 2016.)

IT IS FURTHER ORDERED designating a New Last Day as follows.

NEW LAST DAY: 2/12/2016

Ms. Valenzuela notes that a media representative appeared to be using a recording device at the last proceeding. This Court has not received or considered any requests from the media for coverage of the proceeding; however, in light of Ms. Valenzuela's concerns, the Court did inquire with the Court's Media Office regarding this issue. The Court's Media representative, Mr. Vince Funari advised that it is not unusual for a media representative to use a recording device for purposes of his or her notes. The Court presumes that the recording device was used in the manner described by Mr. Funari. Any media requests must be approved by the Court in advance. All other recording of the proceedings is prohibited.

In light of the agreement to proceed with interviews and in light of the number of attorneys involved, after discussion and by agreement of counsel,

IT IS ORDERED that counsel have three business days to provide to the State, via Email, their availability for the next 60 days so that the State can begin setting up witness interviews. **As agreed by all parties**, an interview will proceed as long as one defense attorney is present; if an attorney doesn't provide his or her availability or does not appear at an interview, his or her presence will be deemed to have been waived and he or she may obtain transcripts of the interview from either the State or another defense attorney.

Discussion is held regarding Defendant WEBBER's **Motion to Compel**, filed March 31, 2015 and the State's Response. The State believes some of the items were initially disclosed, but the State will re-disclose. All items will be disclosed by close of business today, **MAY 15, 2015**. Ms. Valenzuela notes however, that the State anticipates filing a Motion regarding clarification on when the State has to disclose a "statement of codefendant" if the statement of the codefendant is made in the presence of all other defendants. Since the State is producing the items, the Court deems **Defendant Webber's Motion to Compel** to be **RESOLVED**.

IT IS ORDERED setting a **Capital Case Management Conference** for FRIDAY, **JULY 31, 2015 at 10:30 a.m. for 90 minutes time certain** before the HON. MARGARET R. MAHONEY. **Next of Kin may appear telephonically.** JOINT CASE MANAGEMENT REPORTS. No less than two working days before each Case Management Conference, the

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parties shall file a JOINT CASE MANAGEMENT REPORT, which shall inform the Court of at least the following items.

1. Specific progress made since the last Case Management Conference in completing activities previously established by the court and the parties;
2. Specific case preparation to be completed before the next Case Management Conference;
3. Witnesses who have been interviewed in the preceding month;
4. Witnesses who will be interviewed in the upcoming month;
5. Pending issues to be resolved.

PLEASE BE ADVISED: All *FRIDAY* settings in this Division are **time certain** as this Division does not have a regular morning calendar on Fridays.

Prior custody orders are affirmed.

2:50 p.m. Matter concludes.

This case is eFiling eligible: <http://www.clerkofcourt.maricopa.gov/efiling/default.asp>. Attorneys are encouraged to review Supreme Court Administrative Order 2011-140 to determine their mandatory participation in eFiling through AZTurboCourt.